

McLaughlin 10/015,798 AU 2878 Examiner Otilia Gabor March, 2004

OFFICIAL**Informal FAX to Otilia Gabor at 571-273-2435****From John R. Ewbank**

Re: Intent to pay \$385 under 17[e] to Request Continuing Examination under Rule 114, but using Fee Transmittal Form 17 instead of Form 30, so that it might be interpreted as it were a payment under 17[r] under Rule 129[a]. If I sought to correct such matter through Form 30 [accidentally discovered after Express Mail of the submission], how could it reach the individuals able to expedite matters sufficiently to prevent abandonment of the application?

14 PAGES

I tried to follow the Rules, and thought that because I was filing an amendment under Rule 114 that I was achieving a Request for Continued Examination that would provide me with greater flexibility than if I filed it as an amendment under Rule 116. I used the combination of Transmittal Form 21 and Fee Transmittal Form 50. After they had been mailed, I accidentally encountered Form 30, which refers to the fee under 17[e] for an RCE. My study of MPEP, etc. indicates that cases are abandoned sometimes because of technical imperfections in an RCE. If the delay in your receiving the amendment filed yesterday on March 27, 2004 were as long a delay in your receiving the amendment sent July 30, 2003, this case might encounter abandonment problems, notwithstanding my efforts to pay enough fees to avoid technical problems. Hence, I am seeking your guidance because I am aware that there cannot be any Extension of Time for correcting any technical imperfections concerning an RCE.

In order that you may recognize the problem, I am providing you with

McLaughlin 10/015,798 AU 2878 Examiner Otilia Gabor March, 2004

informal "pre-view" inspection of some of the documents that are now at the Patent Office under the Express Mail processing for a Rule 114 Amendment after Final Rejection. At this time you do not need to review the many pages of US patents, and the "laser communication beam" journal article accompanied the 2004 IDS, in addition to about 32 typewritten pages and 3 sheets of drawings in the submission. You can review the situation by scanning: [a] one page Index of submission; [b] Transmittal Form; [c]Fee Transmittal Form; [d] 3 pages of claims; [e] Arguments concerning patentability of claims over Kroll et al in view of Chadwell; [f] draft of proposed Form 30; and [g] draft of proposed letter of transmittal concerning Form 30; [g] data relating to the address on the Express Mail. There were suspicions that the loss of the drawings submitted July 16, 2003 might possibly have resulted from some misinterpretation by that segment of the USPTO dealing with mailstops.

Any submission after Final is theoretically transmitted promptly to the Art Group. Some of these matters might be clarified because of your making a few phone calls within the Patent Office either while it is in the mail-receipt section, and/or soon after delivered to Art Group 2878.

Back around 1950, it seemed to me that the withdrawals from the Deposit Account were approximately the date when the Patent Office received any submission. In recent months, there seem to be weeks and months between filing and fund-transfer. My guess is that there is some way so that the \$385 payment can be properly designated as 17[e] instead of 17[r] and thus possibly prevent abandonment of the application. I may have a few days of higher blood pressure because of my fright about such a potentiality. I am quite grateful that I accidentally discovered Form 30, and apologize for not discovering it sooner.

McLaughlin 10/025,798 AU 2878 Examiner Otelia Gabor, MARCH 2004

Index of Amendment under Rule 114 to Final Rejection of 02/12/04

Approximate number of pages

Postal reply card supplementing use of Express Mail	1
Index	1
Transmittal Sheet	1
Deposit Account authorization	2
Claims	3
Remarks, comprising	5
<i>Introduction</i>	
<i>Priority</i>	
<i>Drawings</i>	
<i>Information Disclosure Statement</i>	
<i>Objection to Claims</i>	
<i>Terminal Disclaimer</i>	
<i>Conclusion</i>	
Voluntarily submitted substitute specification [no claims]	Transmittal plus 6
Alternative Substitute Page 1 if Substitute Specification not entered	1
FORMAL DRAWINGS	3
Terminal Disclaimer	1
Information Disclosure Statement	10
<i>Form</i>	
<i>Discussion of Chadwell in view of Groll et al</i>	
<i>Discussion of other items [formerly Prior Art section of spec]</i>	
<i>Copies of items</i>	many
Signature Page	1
Approximate total of typewritten or formal drawing pages	35

-Index 1 of 1-

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**TRANSMITTAL
FORM**

(To be used for all correspondence after initial filing)

Total Number of Pages in This Submission

11055721 (03 03)
Approved for use through 04/02/2003. GPO 0051-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Application Number	10/015,798
Filing Date	11/02/01
First Named Inventor	MELANIE GELIN
Att. (Initial)	2-878
Examiner Name	OTILIA GABOR
Attorney Docket Number	31-04

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavit/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input checked="" type="checkbox"/> Drawing(s) FORMAL <input type="checkbox"/> Licensing related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD Number of CD(s)	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Remarks TERMINAL DISCLAIMER		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Print or Individual Signature	<i>John R. Eufank</i>
Date	

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage on first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date

Typed or printed	<i>John R. Eufank</i>	Date
Signature	<i>John R. Eufank</i>	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800 786 9199) and select option 2.

JTF050717 (10-03)
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FEE TRANSMITTAL

for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$ 625)

Complete if Known	
Application Number	10/1015778
Filing Date	11/3/01
First Named Inventor	MC LAUGHLIN
Examiner Name	OTTILA GABOR
Art Unit	2873
Attorney Docket No.	01-04

METHOD OF PAYMENT (check all that apply)

<input type="checkbox"/> Check	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Money Order	<input type="checkbox"/> Other	<input type="checkbox"/> None
<input checked="" type="checkbox"/> Deposit Account:				
Deposit Account Number	50-1274			
Deposit Account Name	John R. EW BANK			

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) on any underpayment of fee(s)
 Charge fee(s) indicated below, except for the filing fee to the above identified deposit account.

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 120	Design filing fee	
1003 330	2003 205	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE			
Total Claims	Extra Claims below	Fee from	Fee Paid
Independent Claims	20**	X	
Multiple Dependent	3**	X	
SUBTOTAL (2) (\$)			
3. ADDITIONAL FEES			
Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 86	2201 43	Independent claims in excess of 3	
1203 290	2203 145	Multiple dependent claim, if not paid	
1204 86	2204 43	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (3) (\$)			
4. PETITION FEES			
Total Petitions	Fee from	Fee Paid	
1	100		
SUBTOTAL (4) (\$)			
5. OTHER FEES			
Other fee (specify)			
6. TOTAL FEE PAID			
SUBTOTAL (5) (\$)			625

*or number previously paid, if greater; For Reissues, see above

TERMINAL DISCLAIMER

Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

SUBMITTED BY		(Complete if applicable)	
Name or Type	John R. EW BANK	Registration No.	14853
Signature	John R. EW BANK	Telephone	215-357-3777
		Date	14/03/2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-203B.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

McLaughlin 10/015,798 response to Final 02/12/04 AU 2878 Ex. O. Gabor

The invention claimed is:

1. [Previously presented] A monitoring device useful in seeking to retrieve a lost item, said lost item having a hologram attributable to surface components selectively responsive to a laser beam having an explicit wavelength selected from the atmospheric-penetrative identifying group consisting of 880-nm, 1310 nm and 1550 nm, said monitoring device comprising:

a source of electric power;

means actuated by said electrical power for generating a laser beam having a wavelength matching the wavelength for which said components are selectively responsive;

receptor cells responsive to the feedback light from said laser beam;

amplifier means amplifying the electrical signal generated by said feedback when the laser beam scans a search zone possibly containing such temporarily lost item; and

indicating means alerting a searcher to the varying intensity of such feedback when the laser beam scans a search zone possibly containing such temporarily lost item.

2. [original] The monitoring means of claim 1 in which the indicating means is an audio signal

3. -[original] The monitoring means of claim 1 in which the laser beam has a wavelength of 1310 nm.

-claims pag 1-

McLaughlin 10/015,798 response to Final 02/12/04 AU 2878 Ex. O. Gabor

4 [allowed] A method of seeking to retrieve an item that potentially might become temporarily lost which method comprises:

imparting to an outer surface of said item a hologram by depositing thereon components selectively responsive to a laser beam having an explicit wavelength selected from the atmospheric penetrating identifying group of wavelengths consisting of 88 nm, 1310 nm, and 1550 nm;
directing from a monitoring device controlled by the searcher and initially remote from said temporarily lost item a laser beam having the explicit wavelength corresponding to the wavelength for which said hologram is selectively responsive, said laser beam being directed into a search zone in which the temporarily lost item is believed to be, and said laser beam stimulating the reflection from such components of feedback light;

said monitoring device comprising receptor cells responsive to such feedback light, such receptor cells generating an electrical signal;

said monitoring device comprising amplifying means for amplifying such electric signal;

said monitoring device comprising indicating means actuated by such amplifying means for alerting the searcher to the varying intensity of such indicating means when the laser beam scans a search zone possibly containing such temporarily lost item.

5. [allowed] The method of claim 4 for locating a temporarily lost item in which the hologram is responsive to a laser beam having a wavelength identified as the atmospheric penetrating wavelength of 1310 nm.

Claims pg. 2 -

McLaughlin 10/015,798 response to Final 02/12/04 AU 2878 Ex. O. Gabor

6. [allowed] The method of claim 4 in which the lost item is a launched experimental device.

7. [Allowed] The method of claim 4 in which the lost item is a golf ball.

8. [amended] An item having a hologramized badge selectively responsive to a laser beam having an atmospheric-penetrating identifying wavelength selected from the group consisting of 880 nm, 1310 nm, and 1550 nm, such badge being useful in the method in which [[a laser beam matching such hologramized badge is directed]] a searcher initially remote from the lost item directs from a monitor a laser beam having the explicit wavelength corresponding to the wavelength for which the hologram is selectively responsive into a searching zone and the feedback light is monitored in an effort to locate the temporarily lost item.

9. [withdrawn] A golf ball of claim 8]]

10. [new] An item in accordance with Claim 8 which is a golf ball.

-claims pg. 3=

Patentability over Chadwell in view of Kroll et al, etc.

Many independent inventors fail to retrieve their patenting costs, not because of any high fees by the USPTO, but partly because some patent lawyers/agents exploit independent inventors almost as ruthlessly as some of the patent marketing firms. The law firm handling the preparation and prosecution of the Chadwell application might have obtained a larger fee because his application included a conglomeration of "science fiction" alternatives that were quite confusing to readers of the patent. That portion of the Chadwell patent not directed to the Claims 1-5 embodiment taught very little beyond the scope of Chadwell Claims 1-5. A very slight glimmer of a possible suggestion, when buried in an abundance of unworkable confusion does not constitute the kind of teaching that justifies a rejection of claims under either Sec. 102 or 103.

In the 21st century, litigation judges rarely need to evaluate the validity of claims resulting from a patent application prepared and prosecuted by the inventor as a pro se project. However even in the 21st century, litigation judges would probably show greater leniency toward such a "pro-se" patent than one prepared in a corporate patent department. When an application is prosecuted by a prestigious patent firm that possibly might be lengthening a patent application and adding additional sheets of drawings significantly for the purpose of increasing the potentiality of a larger fee, then clarity standards approach those expected from a corporate patent department. The effectiveness of the patent as a teaching is impacted by the confusion and ambiguity aspects of the total patent. When the teaching is so unambiguous as to justify a Sec. 102 rejection, then the conspicuous evidence that it was a hypothetic proposal can be irrelevant. However, the combination of extreme confusion, inconsistencies, and vagueness with such obviously hypothetical concepts of prior literature can

-IDS 4-

McLaughlin 10/015,798 Art Unit 2878 Otelia Gabor, Ex. March, 2004

trivialize its usefulness as a reference under either Section 102 or Sec. 103. The concept of the reaction of the average artisan to a workshop having copies of the prior art on the walls of the workshop is a useful guide in evaluating Sec. 103 obviousness. Each of applicant's presently sought claims clearly passes such "references on the wall" test for confirming the unobviousness of such claims over Kroll et al in view of Chadwell and/or Chadwell in view of Kroll et al.

Counsel knows very little about golf. Counsel has a lifetime of playing fewer than 18 holes of golf, even though he was a caddy as a teenager. Counsel was an author of articles about buying a used car in the "Pinchpenny" magazine and book. Counsel's frugality prompted him to gullibly accept some prior art descriptions about aspiring to minimize the cost of lost golf balls. Caldwell and his attorney recognized that golfers had more concern about the "stroke penalties" than about the cost of a lost golf ball. If counsel had located the Chadwell patent in the prior art search, the present specification might have been prepared better than it was.

There is enough confusion in the Chadwell patent that one might suspect that a client who had a Claim 1-5 invention was induced to pay more for a confusing patent application featuring some Tom Swift type of science fiction vagueness that confused most readers without teaching significantly more than the invention of claims 1-5. The Chadwell specification supports such claims 1-5. If Chadwell had been preparing to market the hand-held device, there would have been no reason to describe or claim the cumbersome folding two antenna embodiment of claims 1-5.

Fig 6 of the Chadwell drawings is a schematic diagram of how the hypothetical system would work. Measuring and alerting the searcher to such

-IDS 5-

McLaughlin 10/015,798 Art Unit 2878 Orelia Gabor, Ex. March, 2004

distance was stressed by Chadwell, as clarified in Fig 6 in which rectangle 610 features the step entitled "Calculate the estimated distance" for display on the videoscreen.

Chadwell coats a golf ball with metalizing ink, such as an iron ink that can be detected by RADAR so that one of the two antennas can receive a stronger signal than the other, thus helping the searcher to know whether to move the shaft to the left or to the right. As explained at Col. 3, lines 53-54, the "science fiction" emitters 9 of the hand held device "are directed at unique angles" because Chadwell aspires to display on the videoscreen both the angle and the distance from the monitoring device

Fig 3 of Chadwell shows a radar system having two radio antenna designed to alert the searcher about whether the radar antenna should be moved to the left or right. Claims 1-5 are directed to this embodiment. Possibly this is what was developed by Chadwell that prompted the effort to seek a patent on using the radio waves as the "distance-measuring system" for locating the golf ball. During the preparation of the Caldwell application, there might have been some other concepts, all focusing on the distance-measurements, that led to 5 sheets of drawings and 5 columns of description.

Chadwell claims 1-5 are clearly directed to the radar antenna apparatus scheduled to be folded and carried in the golf bag. Chadwell's claim 8 is directed to the use of the soaked rag [shown in Fig. 2A] for coating the ball before each use. Such concepts are certainly remote from molding a grating into the dimples so that they will be selectively responsive to a laser beam of a particular fog-penetrating wave-length.

The general public and counsel have long had familiarity with the use of

McLaughlin 10/015,798 Art Unit 2878 Otelia Gabor, Ex. March, 2004

RADAR to measure the time for the receipt of an echo from a short wave radio beam. Counsel was long unaware, but has discovered recently that there have been certain military applications in which laser beams have been similarly used for measuring distances and/or the speed of a vehicle. Such systems are sometimes called LASAR. Counsel evaluates the combination of Kroll et al and Chadwell as they might be interpreted by a scientist adequately familiar with LASAR and testifying as an expert attacking the validity of any of the presently sought claims. Counsel has concluded that the two patent litigation judges who handled the two infringement suits in which he was involved in the '50s would uphold the validity of each of applicant's presently sought claims as unobvious over any plausible combination of Kroll et al and Chadwell. Hopefully the Examiner will prepare appropriate "reasons for allowance" which might explain that each of the allowed claims patentably distinguishes over the combination of Kroll et al and Chadwell, and/or other combinations of the teachings of any or all of the references.

--IDS 7-

PTO/SB/30 (09-03)

Approved for use through 07/31/2006. OMB 0651 0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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**Request
for
Continued Examination (RCE)
Transmittal**

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	101015798
Filing Date	11/2/01
First Named Inventor	McLAUGHLIN
Art Unit	2878
Examiner Name	OTILIA GABOR
Attorney Docket Number	01-04

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

Express Mail on March 27, 2004

a. Previously submitted, if a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. Consider the arguments in the Appeal Brief or Rely Brief previously filed on _____

ii. Other _____

b. Enclosed

i. Amendment/Reply

ii. Affidavit(s)/Declaration(s)

iii. Information Disclosure Statement (IDS)

iv. Other _____

2. **Miscellaneous**

a. Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; fee under 37 CFR 1.17(f) required)

b. Other _____

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

a. The Director is hereby authorized to change the following fees, or credit any overpayments, to

Deposit Account No. 50-1224

i. RCE fee required under 37 CFR 1.17(c) *This supplements Amendment Under Rule 1.14*

ii. Extension of time fee (37 CFR 1.136 and 1.17) *ON 3-27-04 comprising Form 17 that*

iii. Other *might have been misinterpreted as a 1.17(f) payment*

b. Check in the amount of \$ *even though the application does not*

c. Payment by credit card (Form PTO-2038 enclosed) *qualify for Rule 129 (a) procedures*

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	<u>JOHN R. EWING</u>	Registration No. (Attorney/Agent)	<u>14-853</u>
Signature	<u>John R. Ewing</u>	Date	<u>March 28, 2004</u>

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	<u>JOHN R. EWING</u>	Date	<u>March 28, 2004</u>
Signature	<u>John R. Ewing</u>		

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Mailstop: Rule 117 Amendment After Final